

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MICHAEL S. BURKE,)
vs.)
Plaintiff,)
CITY OF OKLAHOMA CITY, *et al.*,)
Defendants.)
Case No. CIV-18-984-D

ORDER

Before the Court is Plaintiff’s Motion to File First Amended Complaint [Doc. No. 8], which was filed with his response to, and within 21 days of, Defendant City of Oklahoma City’s Motion to Dismiss [Doc. No. 6]. At that point, Plaintiff was entitled to amend his Complaint as a matter of right under Fed. R. Civ. P. 15(a)(1)(B). Therefore, the Court finds that Plaintiff’s Motion should be granted. Further, Plaintiff’s amendment will moot Defendant’s Motion. *See Davis v. TXO Prod. Corp.*, 929 F.2d 1515, 1517 (10th Cir. 1991) (amended pleading “supersedes the original and renders it of no legal effect”) (internal quotation omitted); *see also Predator Int’l, Inc. v. Gamo Outdoor USA, Inc.*, 793 F.3d 1177, 1180-81 (10th Cir. 2015); *Mink v. Suthers*, 482 F.3d 1244, 1254 (10th Cir. 2007).

IT IS THEREFORE ORDERED that Plaintiff's Motion to File First Amended Complaint [Doc. No. 8] is GRANTED. Plaintiff shall file his proposed pleading [Doc. No. 8-1] within 7 days from the date of this Order.

IT IS FURTHER ORDERED that Defendant City's Motion to Dismiss [Doc. No. 6] is DENIED without prejudice to resubmission, if appropriate, in response to the First Amended Complaint.

IT IS SO ORDERED this 5th day of November, 2018.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE